

NTSB Order No. EA-4196

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 9th day of June, 1994

Respondent .

Docket SE-13145

By NTSB Order No. EA-4130 (served March 25, 1994), the Board granted a motion by the Administrator to dismiss the respondent's appeal in this proceeding because he did not file a timely appeal brief. In a petition for reconsideration of that dismissal, the respondent, by counsel, argues in effect that the Board erred in determining that respondent did not establish good cause for his failure to file a timely extension request after experiencing a computer equipment problem affecting his ability to print out the brief for submission to us within the filing period.¹ We will deny the petition.

Respondent essentially asserts that the Board incorrectly assumed that he could have timely requested an extension for filing the appeal brief once he discovered that he could not get it to print out from his laptop computer. This assumption was mistaken, respondent insists, because he did not become aware of the computer malfunction until it was too late in the day on which the brief was due to orally obtain either consent to an extension from the FAA or approval of such a request from the Board, a circumstance which necessitated the filing of a written request. However, since the computer problem which kept him from printing the brief meant he could not print out a formal motion for an extension, respondent maintains he should be excused for his failure to meet the deadline. We disagree.

Respondent did, as he recognizes, need to file a written request for an extension, whether deemed a formal motion or otherwise, since he had waited until the last minute to serve his brief and therefore could not by telephone obtain more time to resolve his equipment breakdown.² However, the suggestion that he should be excused for not doing so because he was not able to print such a request borders on the frivolous, for even if he mistakenly believed, as he professes he did, that a handwritten extension request would not have been acceptable to the Board,³ the only diligent course of action to follow in such circumstances would have been to pen and mail such a request on the due date, despite any objection to its form that *might* later be raised, rather than do nothing and risk dismissal for a procedural lapse obviously far more serious than whether a document is written by hand or by machine.⁴

²Respondent had already received a 30-day extension of the 50-day period provided by our rules for perfecting an appeal from a law judge's decision.

³Respondent references no Board precedent for any belief he may have had that a motion had to be printed and, in fact, our rules of practice direct only that as to certain documents, such as appeals from initial decisions, they must be either typewritten or "in legible handwriting" (Section 821.7(c)). Nevertheless, we think it should have been self-evident to respondent's counsel that encountering a problem that made printing an extension request impossible would have itself provided adequate justification for deviating from any such requirement.

⁴We are skeptical that respondent chose not to submit an extension request for the reason he cites, for, among other things, he did not submit an extension request, or a request that the brief be accepted out of time, once he was able to print out his brief. In this connection, we note also that respondent had

Although the Administrator opposes as premature respondent's alternative request for a stay pending judicial review, we see no reason to make respondent file another motion for such relief after the issuance of this order extinguishes the stay currently in effect by virtue of the appeal to the Board from the Administrator's suspension order.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's petition for reconsideration of Board Order EA-4130 is denied;

2. The request for stay of the effective date of this order is granted; and

3. The effective date of this order is stayed until 60 days after its service date or, if a petition for review is filed in the U.S. Court of Appeals within that period, until the Court enters judgment on the petition.

VOGT, Chairman, HALL, Vice Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above order.

(..continued)

earlier registered his surprise and alarm that the Administrator had moved to dismiss the appeal for being three days late, given his prior understanding that this was not the type of case in which extension requests would be opposed. It seems to us that respondent simply assumed that the Administrator would not care if respondent did not get the brief, due on a Friday, filed until the following Monday. Respondent appears not to appreciate that the obligation to meet a procedural deadline cannot be waived by another party to a proceeding.